

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOEL F. HOLUBAR)
and)
MARIANA H. HOLUBAR,)
Plaintiffs)
v.) Civil Action No. 03-CV-12404-NG
KENT KHLBERGER,)
CHASE-FREEDMAN FAMILY TRUST)
and)
M/Y CHEROSA, *in rem*,)
Defendants)

)

BRIEF JOINT STATEMENT OF DEFENDANTS
PURSUANT TO AUGUST 12, 2005 ORDER

This Brief Joint Statement is submitted by the Defendants pursuant to the Court's Order dated August 12, 2005, in connection with a telephone status conference scheduled for December 14, 2005 at 10:00 a.m. Counsel for Defendants attempted, unsuccessfully, to confer with counsel for Plaintiffs concerning this Joint Statement.

a. Case Status

Fact and expert discovery is complete.

Plaintiffs failed to produce any expert reports; and the deadline for them to do so (October 3, 2005) has elapsed.

Defendants timely produced their expert reports to Plaintiffs by October 31, 2005, in compliance with the Scheduling Order of August 12, 2005.

Plaintiffs failed to produce any replies to Defendants' expert reports; and the deadline for them to do so (November 11, 2005) has elapsed.

Plaintiffs have not taken the depositions of any of any experts, nor have they served any notices of any expert witness depositions. The deadline for taking expert depositions is December 9, 2005. No depositions are outstanding.

Plaintiffs failed to follow the Court's oral instruction at the last scheduling conference on August 12, 2005 to submit to Defendants in writing a current settlement demand.

b. Scheduling for the Remainder of the Case Through Trial

Defendants respectfully request that the Court discuss with the parties during the December 14, 2005 telephone status conference the schedule for the remainder of the case through trial.

Defendants respectfully request that they be allowed as much advance notice as is reasonably possible as to any trial date, to allow for the scheduling logistics for the appearance of far-flung witnesses and parties. For example, one of the Defendants, Captain Kent Kholberger, is no longer employed as Captain of the vessel M/Y Cherosa. On information and belief, he is presently Captain of another vessel whose main port is in the Caribbean. He would need to plan well in advance to attend a trial in Boston. In addition, Captain James Abruzzi, a fact witness, is currently captain of the M/Y Cherosa, and he is likely to be in various locations far from Boston during the winter.

c. Use of Alternative Dispute Resolution Programs

No agreement exists at this time for consent to alternate dispute resolution, but the possibility is not precluded.

d. Consent to Trial Before the Magistrate Judge

The parties have not consented at this time to a trial by a Magistrate Judge, but the possibility is not precluded.

Dated: December 7, 2005

Respectfully submitted,

/s/ Curtis C. Pfunder

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CERTIFICATE OF CONFERENCE

I certify that I, together with Defendants' lead counsel, Edward Radzik, called Plaintiffs' counsel, Bjorn Holubar, on December 7, 2005 to confer with him concerning the Brief Joint Statement due on December 7, 2005. We reached Attorney Holubar's recording device, and I left a voice message stating that we were calling him about the Joint Statement due today, December 7, 2005, and requesting that he call me back. As of this writing (after 5:00 p.m. on December 7), I have not heard back from him. Accordingly, Defendants file their Brief Joint Statement without input from Plaintiffs.

/s/ Curtis C. Pfunder

Curtis C. Pfunder